

AMENDED IN ASSEMBLY MAY 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1640

Introduced by Assembly Member Laird

February 21, 2003

An act to amend Sections 25501.4, 25532, and 25540 of, and to add Section 25404.2.1 to, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1640, as amended, Laird. Hazardous materials: enforcement.

(1) Existing law requires the Secretary for Environmental Protection to adopt regulations and implement a unified hazardous waste and hazardous materials management regulatory program. Existing law authorizes a city or local agency that meets specified requirements to apply to the secretary to implement the unified program, and requires every county to apply to the secretary to be certified to implement the unified program. Existing law requires a unified program agency to develop and implement a procedure for issuing, to a unified program facility, a unified program facility permit, which encompasses specified permitting requirements.

This bill would authorize a unified program agency to suspend or revoke any unified program facility permit or element of a unified program facility permit for a violation of the requirements encompassed in the permit, *except for a minor violation, as defined*. The bill would require the permittee, if the permit or permit element is suspended or revoked, to immediately discontinue operating that facility or applicable unified program element until the permit is

reinstated or a new permit is issued. The bill would require a unified program agency that finds a unified program facility is not in compliance with any of the requirements encompassed in the permit to issue a specified notice and, upon the request of the permittee, to conduct a hearing. The bill would specify procedures for the conduct of the hearing and the issuance of a notice of decision by the hearing officer.

The bill would allow a unified program agency to temporarily suspend the permit or permit element and order the operation of a facility to close or cease if the unified program agency finds the facility poses an immediate danger to the public health or safety, unless the danger is immediately corrected. The bill would require the unified program agency to issue a specified notice to the permittee of that facility and would specify procedures for the conduct of a hearing, if requested by the permittee.

The bill would authorize a unified program agency, after providing opportunity for a hearing, to modify, suspend, or revoke a permit or permit element for serious or repeated violations of any of the unified program elements or for the interference in the performance of the duty of the unified program agency. The bill would allow a unified program agency to reinstate or issue a new permit or permit element if the unified program agency makes a specified determination.

Since the bill would impose new duties upon unified program agencies with regard to the enforcement of the unified program, the bill would create a state-mandated local program.

(2) Existing law requires businesses that handle hazardous materials to prepare a business plan and submit an annual inventory form to the administering agency. The term “business” is defined as including the federal government, as specified, or any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

This bill would include, as a business for purposes of these requirements, any agency, department, office, board, commission, or bureau of a city, county or district.

(3) Existing law provides for the imposition of civil penalties upon stationary sources with regard to the program to prevent accidental releases of regulated substances and imposes a criminal penalty upon a stationary source that knowingly violates those requirements.



This bill would define the term “person” for purposes of the provisions regulating accidental releases and would authorize the imposition of civil and criminal liability upon a person who violate those provisions. Since the bill would create a new crime, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25404.2.1 is added to the Health and
2 Safety Code, to read:
3 25404.2.1. (a) For purposes of this section the following
4 definitions apply:
5 (1) “Facility” means a unified program facility.
6 (2) “Permit” means a unified program facility permit issued
7 pursuant to Section 25404.2.
8 (3) “Permittee” means a person issued a unified program
9 facility permit.
10 (b) A unified program agency may suspend or revoke any
11 unified program facility permit, or an element of a unified program
12 facility permit, for a violation of the requirements encompassed in
13 the permit, as specified in paragraph (6) of subdivision (a) of
14 Section 25404, *except for a minor violation, as defined in*
15 *paragraph (3) of subdivision (a) of Section 25404, as that section*
16 *read on January 1, 2003.* If the permit or permit element is
17 suspended, any permittee shall immediately discontinue operating
18 that facility or function of the facility to which the permit element
19 applies until the permit is reinstated. Any permittee for which a
20 permit or element of a permit has been revoked shall immediately
21 discontinue operating that facility or function of the facility to
22 which the permit element applies until a new permit is issued.
23 (c) (1) Whenever a unified program agency finds that a facility
24 in not in compliance with any of the requirements encompassed in

1 the permit, as specified in paragraph (6) of subdivision (a) of
2 Section 25404, the unified program agency shall issue a written
3 notice to comply with the requirement to the permittee. If the
4 permittee fails to comply, the unified program agency shall issue
5 a notice to the permittee that sets forth the acts or omissions with
6 which the permittee is charged, and informing the permittee of the
7 right to a hearing, if requested, to show cause why the permit
8 should not be suspended or revoked. The permittee shall make a
9 written request for a hearing within 15 calendar days after receipt
10 of the notice. If the permittee does not request a hearing within 15
11 calendar days after receipt of the notice, the permittee shall be
12 deemed to have waived the right to a hearing. When circumstances
13 warrant, the hearing officer may order a hearing at any reasonable
14 time within the 15-day period to expedite the permit suspension or
15 revocation process.

16 (2) The unified program agency shall hold the hearing
17 requested pursuant to paragraph (1) within 15 calendar days of the
18 receipt of a request for a hearing. Upon written request of the
19 permittee, the hearing officer may postpone any hearing date, if
20 circumstances warrant this action.

21 (3) The hearing officer shall issue a written notice of decision
22 to the permittee within five working days following a hearing
23 conducted pursuant to paragraph (2). If the hearing officer
24 suspends or revokes the permit, the notice shall specify the acts or
25 omissions with which the permittee is charged, and shall either
26 state the terms of the suspension or that the permit or permit
27 element has been revoked.

28 (d) (1) If the unified program agency finds that a facility poses
29 an immediate danger to the public health or safety unless the
30 danger is immediately corrected, the unified program agency may
31 temporarily suspend the permit or permit element and order the
32 operations of the facility closed or ceased.

33 (2) If a unified program agency temporarily suspends a permit
34 pursuant to paragraph (1), the unified program agency shall issue
35 the permittee a notice setting forth the acts or omissions with
36 which the permittee is charged, specifying the pertinent code
37 section, and informing the permittee of the right to a hearing.

38 (3) At any time within 15 calendar days after service of a notice
39 pursuant to paragraph (2), the permittee may request, in writing,
40 a hearing before a hearing officer to show cause why suspending

1 the permit or permit element is not warranted. The unified
2 program agency shall conduct a hearing within 15 calendar days
3 of the receipt of a request for a hearing. If the permittee does not
4 request a hearing within 15 calendar days, the permittee shall be
5 deemed to have waived the right to a hearing.

6 (e) The unified program agency may, after providing
7 opportunity for a hearing, modify, suspend, or revoke a permit or
8 permit element for serious or repeated violations of any of the
9 unified program elements specified in subdivision (c) of Section
10 25404 or for the interference in the performance of the duty of the
11 unified program agency.

12 (f) The unified program agency may reinstate or issue a new
13 permit or permit element if the unified program agency determines
14 that the conditions that prompted the suspension or revocation
15 pursuant to this section no longer exist.

16 SEC. 2. Section 25501.4 of the Health and Safety Code is
17 amended to read:

18 25501.4. Notwithstanding subdivision (d) of Section 25501,
19 “business” also includes all of the following:

20 (a) The federal government, to the extent authorized by federal
21 law.

22 (b) Any agency, department, office, board, commission, or
23 bureau of state government, including, but not limited to, the
24 campuses of the California Community Colleges, the California
25 State University, and the University of California.

26 (c) Any agency, department, office, board, commission, or
27 bureau of a city, county or district.

28 SEC. 3. Section 25532 of the Health and Safety Code is
29 amended to read:

30 25532. Unless the context indicates otherwise, the following
31 definitions govern the construction of this article:

32 (a) “Accidental release” means an unanticipated emission of
33 a regulated substance or other extremely hazardous substance into
34 the ambient air from a stationary source.

35 (b) “Administering agency” means the local agency
36 authorized, pursuant to Section 25502, to implement and enforce
37 this article.

38 (c) “Covered process” means a process that has a regulated
39 substance present in more than a threshold quantity.

(d) “Modified stationary source” means an addition or change to a stationary source that qualifies as a “major change,” as defined in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations. “Modified stationary source” does not include an increase in production up to the source’s existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300.

(e) “Process” means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) “Qualified person” means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) “Regulated substance” means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2) (A) An extremely hazardous substance listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

(i) A gas at standard temperature and pressure.

(ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than 10 millimeters mercury.

(iii) A solid that is one of the following:

(I) In solution or in molten form.

(II) In powder form with a particle size less than 100 microns.

(III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B) (i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard

1 Assessment, determine which of the extremely hazardous
2 substances listed in Appendix A of Part 355 (commencing with
3 Section 355.10) of Subchapter J of Chapter I of Title 40 of the
4 Code of Federal Regulations do either of the following:

5 (I) Meet one or more of the criteria specified in clauses (i), (ii),
6 or (iii) of subparagraph (A).

7 (II) May pose a regulated substances accident risk, in
8 consideration of the factors specified in subdivision (g) of Section
9 25543.1, and, therefore, should remain on the list of regulated
10 substances until completion of the review conducted pursuant to
11 subdivision (a) of Section 25543.3.

12 (ii) The office shall adopt, by regulation, a list of the extremely
13 hazardous substances identified pursuant to clause (i). Extremely
14 hazardous substances placed on the list are regulated substances
15 for the purposes of this article. Until the list is adopted, the
16 administering agency shall determine which extremely hazardous
17 substances should remain on the list of regulated substances
18 pursuant to the standards specified in clause (i).

19 (h) “Regulated substances accident risk” means a potential for
20 the accidental release of a regulated substance into the
21 environment that could produce a significant likelihood that
22 persons exposed may suffer acute health effects resulting in
23 significant injury or death.

24 (i) “RMP” means the risk management plan required under
25 Part 68 (commencing with Section 68.1) of Subchapter C of
26 Chapter I of Title 40 of the Code of Federal Regulations and by this
27 article.

28 (j) “State threshold quantity” means the quantity of a regulated
29 substance described in subparagraph (A) of paragraph (2) of
30 subdivision (g), as adopted by the office pursuant to Section
31 25543.1 or 25543.3. Until the office adopts a state threshold
32 quantity for a regulated substance, the state threshold quantity
33 shall be the threshold planning quantity for the regulated substance
34 specified in Appendix A of Part 355 (commencing with Section
35 355.10) of Subchapter J of Chapter I of Title 40 of the Code of
36 Federal Regulations.

37 (k) “Stationary source” means any stationary source, as
38 defined in Section 68.3 of Title 40 of the Code of Federal
39 Regulations.

(l) “Threshold quantity” means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

(m) “Person” means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. “Person” also includes any city, county, city and county, district, commission, the state or any department, agency or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

SEC. 4. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any person or stationary source that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials. When an administering agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this chapter, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.

(b) Any person or stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the county jail for not more than one year. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.

1 SEC. 5. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution or because a local agency or school district has the
10 authority to levy service charges, fees, or assessments sufficient to
11 pay for the program or level of service mandated by this act, within
12 the meaning of Section 17556 of the Government Code.

